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# Circuit Court of Appeals

For the Ninth Circuit. /

ERIK ENAR KRISTER LOVSKOG and  
SVANHILD SALLY WILHELMINA  
ABRAHAMSSON,

Appellants,

vs.

AMERICAN NATIONAL RED CROSS,

Appellee.

## Transcript of Record

Upon Appeal from the District Court  
for the Territory of Alaska  
Division Number One

FILED

OCT 5 - 1939

PAUL P. O'BRIEN,  
CLERK



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Circuit Court of Appeals

For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Attorney for Appellee.

---

In the Commissioner's Court for the Juneau Precinct, Division Number One, Territory of Alaska.

Before Felix Gray, United States Commissioner, and Ex-Officio Probate Judge.

In the Matter of the Estate

of

GUSTAF LANART, Deceased.

ORDER SETTING ASIDE PURPORTED WILL ADMITTED TO PROBATE, AND DECREE ADMITTING THE CLAIMS OF ERIK ENAR KRISTER LOVSKOG, AND SVAN-HILDSALLY VILHELMINA ABRAHAMSSON, AS SOLE HEIRS.

Now at this time, this matter coming on regularly for a hearing upon the motion of Guy McNaughton,

administrator of the estate of Gustaf Lanart, deceased, and in accordance with and Order and Citation issued by this Court under date of December 17, 1937, for a hearing set for 10.00 A.M. January 31, 1938, and at which time the case was called, and upon the recommendation of the attorneys in the matter, the hearing was postponed until 2.00 P.M. February 9, 1938, and at which time the hearing was held. The motion filed by Attorney H. L. Faulkner on January 25, 1938 to set aside the Will, and asking for a decree in favor of the heirs, a brother and sister of the deceased, was argued for at length by H. L. Faulkner and Grover C. Winn, attorneys for the heirs, and submitted testimony of three witnesses and offered three exhibits #1, #2, #3 in support of his argument. Following which, Attorney Frank H. Foster, representing the American Red Cross Society, argued for his petition that Letters Testamentary be forthwith issued by the Court to Guy McNaughton, as administrator, in accordance with the Order of the Court admitting the Will to probate on August 10, 1937, and that the action of the Court, at that time be sustained and remain in full force and effect.

Now therefore, it appearing to the Court, that there is some reasonable doubt as to the purported Will, and that [1\*] the legal claims of the sister and brothers as heirs is sufficiently proved and established, in consequence thereof:

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\*Page numbering appearing at the foot of page of original certified Transcript of Record.

It is hereby adjudged and ordered, that the purported Will as admitted to probate on August 10, 1937, be set aside and the Letters Testamentary with Will Annexed issued on that same date be revoked, and furthermore,

It is hereby decreed that Erik Enar Krister Lovskog and Svanhild Sally Vilhelmina Abrahamsson, a brother and sister of the deceased, are legally the sole heirs.

Witness my hand and the seal of this court, this 9th day of February, 1938, at Juneau, Alaska.

[Seal]

FELIX GRAY

United States Commissioner  
and Ex-Officio Probate Judge.

[2]

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In the United States Commissioner's Court in and for Juneau Precinct, First Division, Territory of Alaska.

(In Probate)

In the Matter of the Estate of

GUSTAV LANART,

Deceased.

#### NOTICE OF APPEAL.

To Faulkner & Banfield and Grover C. Winn, Attorneys for Erik Einar Kristar Lofskog and Sally Vilhelmina Abrahamson:

Comes now American National Red Cross Society as legatee under the Will of Gus or Gustav

Lanart and claimant to the estate of said Lanart, deceased under said Will, and gives notice of appeal to the District Court of the Territory of Alaska, First Division, from a certain order and decree made and entered in the Matter of the Estate of Gustav Lanart, deceased, after a hearing had on the 9th day of February, 1938 upon citation of the above named Probate Court and upon the Motion to set aside an order admitting will to probate which said motion was filed in said above named court by Faulkner and Banfield and Grover C. Winn on January 25th, 1939, said order appealed from being entitled "Order Setting Aside Purported Will Admitted to Probate and Decree Admitting the Claims of Erik Einar Krister Lofskog, and Svanhild Sally Vilhelmina Abrahamson, as sole heirs thereto."

This appeal is taken by appellant American National Red Cross Society from the United States Commissioner's, ex-officio Probate Court of Juneau Precinct, First Division, Territory of Alaska to the District Court of the Territory of Alaska, First Division, and is based on [3] questions of both law and fact.

Dated at Juneau, Alaska, the 21st day of February, 1938.

FRANK H. FOSTER

Attorney for American National  
Red Cross Society, Appellant.

Received service of the above Notice.

FAULKNER & BANFIELD,

By M. WENDLING.

[Endorsed]: Filed Feb. 21, 1938. [4]

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In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.

No. 4182-A.

In the Matter of the Estate

of

GUSTAF LANART,

Deceased.

#### MEMORANDUM DECISION

This is an appeal from the court of the United States Commissioner (and ex-officio Probate Judge) for the Territory of Alaska, Juneau Commissioner's Precinct in the above entitled matter, from an order entitled "Order Setting Aside Purported Will Admitted to Probate and Decree Admitting the Claims of Erik Einar Krister Lofskog and Svanhild Sally Vilhelmina Abrahamson as sole heirs thereto," made by the judge of said court on February 9, 1938.

It appears from the proceedings had in the Commissioner's court that a petition for Letters of Administration was filed on December 31st, 1936 and

pursuant thereto Guy McNaughton was duly appointed and qualified as Administrator of said estate. That thereafter, on July 27, an instrument purporting to be the holographic will of the deceased was filed with petition for probate. Thereafter, on August 10, 1937, hearing was had for proof of the will, and on the same date an order entered admitting the document in question to probate as the last will and testament of the deceased and letters testamentary issued.

Thereafter a petition was filed on behalf of Erik Einar Krister Lofskog and Svanhild Sally Vilhelmina Abrahamson, attacking the validity of the document theretofore admitted to probate as the will of the deceased [5] and claiming the estate of deceased as the brother and sister and only heirs of the deceased. Hearings were had thereon and on February 9, 1938 an order was entered setting aside the probate of the purported will and decreeing the claimants to be the rightful heirs of said estate.

From this decree appeal was taken by the American National Red Cross to this court.

The questions involved in this appeal are:

First: Whether or not the purported holographic or olographic will of deceased first admitted to probate by the Commissioner and ex-officio Probate Judge and later set aside by him, is a valid will.

Second: Whether it is sufficient to bequeath the property of the deceased to the appellant American National Red Cross.

An "holographic will" as described and defined in Ruling Case Law, Vol. 28, under Section 16 of "Wills", is: "One entirely written, dated and signed by the testator in his own handwriting."

Our law expressly recognizes holographic wills, and provides how they may be proven. Section 4624 C.L.A. 1933:

"Holographic Wills. How Proved. Holographic wills, with or without attestation, shall be admitted to probate the same as other wills and be proved in the same manner as other private writings."

The document in question meets all the requirements of our law. The entire document is admittedly written, dated and signed wholly in the handwriting of the testator in conformity with our statute, and should be considered together as one document.

The uncontradicted testimony shows, and the Court [6] finds, that the purported will is "one entirely written, dated and signed by the testator in his own handwriting"; that the testator was at the time qualified under our law to make a will, being of sound mind, over twenty-one years old, and not acting under any fraud, duress or undue influence, and that said instrument was duly proved as provided by law, as the last will and testament of

Gustaf Lanart, deceased, and entitled to probate as such.

Having determined that the document in question is an holographic will and that the testator was qualified to make a will under our law, we pass to the discussion of the wording of the instrument and whether or not it is sufficient to dispose of the testator's estate. This, of course, will have to be determined by the general rules governing the construction of wills.

As has already been pointed out, "Aside from the requirement as to writing, date and signature, an holographic will is subject to no other form. It is sufficient if the writing expresses, however informally, a testamentary purpose in language sufficiently clear to be understood."

Ruling Case Law makes this statement of the law :

"The cardinal rule of testamentary construction is to ascertain the intent of the testator and give it effect, unless the testator attempts to accomplish a purpose or to make a disposition contrary to some rule of law or public policy. All rules of construction are designed to ascertain and give effect to the intention of the testator and all rules or presumptions are subordinate to the intent of the testator where that has been ascertained. The intention will control any arbitrary rule, however ancient may be its origin, unless the testator attempts to effect that which the law forbids."

28 R.C.L. Sec. 173, pp. 213-14.



And again: [7]

“The intent of the testator is to be collected from the whole will and from a consideration of all the provisions of the instrument taken together rather than from any particular form of words. The intention is not to be gathered from detached portions alone, and the court should not consider merely the particular clause of the will which is in dispute. The language employed in a single sentence is not to control as against the evident purpose and intent as shown by the whole will. In other words, a will is not to be construed *per parcella* but by the entirety. As sometimes expressed, the intent is to be ascertained from a full view of everything within the four corners of the instrument. If the whole will clearly indicates what was the testator’s intent the rules of law which aid in the construction of wills need not be invoked.”

28 R.C.L. Sec. 175.

The policy of the law is to uphold wills and to make them valid and effective if that can be done. In doing so the courts have gone to great lengths and have repeatedly held that the intent of a testator need not be declared in express terms. Quoting again from *Ruling Case Law*, we find this statement:

“The intent of the testator need not be declared in express terms in the will but it is sufficient if the intention can be clearly in-

ferred from the particular provisions of the will and from its general scope and import. The courts will seize upon the slightest indications of that intention which can be found in the will to determine the real objects and subjects of the testator's bounty. The clear intention of the testator should prevail although it would require some departure from the literal construction of one of the clauses in the will. The general pervading purpose of the testator may override any inconsistent specific provisions found in the will, and it has been held that the testator's particular intent, as shown by a single provision standing by itself, must yield to the general leading intent as manifested in the whole instrument. In the interpretation of a will the dominant or primary intention, gathered from the whole thereof and all its provisions, must be allowed to control, and a particular and minor intent is never permitted to frustrate a general and ulterior object of paramount consideration. ACCORDINGLY IN INTERPRETING WILLS FAVOR WILL BE ACCORDED TO THOSE BENEFICIARIES WHO APPEAR TO BE THE SPECIAL OBJECTS OF THE TESTATOR'S BOUNTY."

28 R.C.L. Secs. 177-178. [8]

"In the construction of wills the object is not to seek flaws and declare them invalid, but

to assist them if legally possible, and the presumption is that the testator intended a lawful rather than an unlawful things. Therefore where the language used in the will is reasonably susceptible of two different constructions, one of which will defeat, and the other sustain, the provisions, the doubt is to be resolved in favor of the construction which will give effect to the will rather than the one which will defeat it.”

28 R.C.L. Sec. 167.

“The rules of construction are to be employed only when doubt exists and when a testator employs language that is clear, definite and incapable of any other meaning than that which is conveyed by the words used there is no reason for resorting to rules of construction.”

28 R.C.L. Sec. 165.

An excellent collection and digest of the cases pertaining to the construction of holographic wills is found in a note following the case of *Estate of Fay* in 104 *American State Reports* at pages 22-34. In that note at page 24, under the heading, “What Writings Amount to” (*Holographic Wills*) it is stated, on authority cited:

“It is sufficient that he (the testator) manifests his wish that, on his death, his property, or some part of it, shall go to another person by him designated.”

Holographic wills being made by the testator himself without the aid of experienced or professional help should, from their very nature, be more liberally construed than ones prepared by practical hands. If it were otherwise few if any holographic wills would ever be sustained. Furthermore, our statutes not only recognize them but apparently favor them, and there is ample reason why this is so. This is a large territory, approximately one-third the size of the United States proper; sparsely settled by small settlements and with great distances between them. The major part of our population is made up [9] of miners and fishermen living and working in remote places, alone or in small groups, often under the most rigorous climatic conditions and having only the most primitive means of transportation. The action of our legislature in this regard is therefore not only logical but reflective of the actual necessities of our conditions, for probably nowhere else in the world do conditions so necessitate the aid of both the courts and the legislature in making it possible for its citizens to make testamentary disposition of their property in the simplest manner.

That it was intended by him to be his last will and testament is also borne out by the wording of the document itself. It begins by stating that "After death" (showing it to have been made in contemplation of death) "forward all to Red Cross"; and in another place he calls it his "will." The testator then gives his reason for making the

Red Cross the recipient of his bounty, viz. "As I don't think any relatives are alive and the (they) might be able to do some good with the little I have."

Some question has been raised by counsel on both sides as to the wording of the instrument, claiming that some of it is illegible. I do not, however, agree. If the instrument is put under a strong reading glass and examined (as I have done) I think it can be read in its entirety without difficulty.

Counsel for the claimant heirs contends that the document under consideration is not a will "for the testator does not GIVE, DEVISE nor BEQUEATH anything to anybody; he does not use any words or language in the document which have that meaning."

There is no merit in this contention. It is not necessary that any testamentary or other technical words [10] be employed. Ruling Case Law, Vol. 28 Sec. 116 states the law thus:

"Aside from the requirement as to writing, date and signature an holographic will is subject to no other form. It is sufficient if the writing expresses, however informally, a testamentary purpose in language sufficiently clear to be understood."

Our statute also provides, (Sec. 4639 C. L. A. 1933):

"Construction of Wills. Testator's Intent to be Carried Out. All courts and others concerned in the execution of last wills shall have due regard to the directions of the will and the true intent

and meaning of the testator in all matters brought before them.”

Counsel for the claimant heirs also takes exception to the word “forward” used in the will, and it is contended that the testator not only failed to use any of the legal testamentary terms but does not even say that he “gives.”

As already pointed out holographic wills are not required to be in any particular form, but any language used expressing the intentions of the testator is sufficient.

“Forward” according to the authorities, means to send forward—to send toward place of destination; to transmit.

(Webster’s Dictionary;

3 Words & Phrases, 3d series 755;

Nicolleti vs. Bank of Los Banos, 214 Pac.

(Cal.) 51-52)

It also means or implies to send or transmit the identical thing—that which is delivered for that purpose; and “forward” has been held to mean, as applied to a package of currency delivered to an express company for that purpose, “that the company should carry and deliver the package to its destination.

3 Words & Phrases 2926;

Reed vs. U. S. Express Co. 48 N. Y. 462;

8 Amer. Reports 561.

Furthermore, the wording of the will should be **read in the light of the circumstances** surrounding

the testator at the time, as disclosed by the evidence in the case. [11]

The testator was an ignorant, illiterate man. His entire estate consisted of cash (money in bank) and stocks or bonds. There was no real estate to be sold nor even personalty that needed to be converted into cash. Everything that he owned could be simply gathered up and "forwarded" in its then condition, without further trouble, and he apparently had the idea, as many people do, that nothing more was necessary to effectuate his intention of bestowing his estate upon the object of his bounty, the Red Cross, or American National Red Cross. That, in any event, is the view of this court, and one of the conclusions upon which we have determined the real intention of the testator.

The other pertinent facts appear to be substantially as follows:

The deceased, Gustaf Lanart, whose true name, according to his Declaration of Intention to become a citizen of the United States, was Gustaf Lanart Lafskog, was born on March 15, 1873 at Alghult, Sweden, and according to the same authority he arrived at Philadelphia about April 13, 1906. He later came to Alaska where he has lived since about April 1, 1912, and became a naturalized citizen of the United States at Juneau, Alaska on December 16, 1918.

On or about December 10, 1936, the body of Gustaf Lanart was found at or near his cabin at

Gambier Bay, Alaska. For many years Lanart had lived and been employed as a watchman by the Pacific American Fisheries at its cannery there and had lived on a wanigan at or near the cannery. The cannery had been closed for many years, and since then Lanart had led a solitary and lonely existence as a watchman there, relieved only by visits from chance passers-by and occasional trips to Juneau for supplies, or [12] on business. About December 1, 1936 Lanart made a trip to Juneau (about a hundred miles from Gambier Bay) during which trip he deposited or left with the B. M. Behrends Bank there a tin box for safe keeping. This box was later found to contain bank books, stock certificates, etc. showing him to be the possessor of an estate of about \$8,000.00 in money and stocks.

Following the finding of Lanart's dead body the United States Commissioner at Juneau was notified, and accompanied by Messrs. Guy McNaughton and M. E. Monagle, the Commissioner proceeded to that place, and while there was given the little book in which was written what is now claimed to be the holographic will of Gustaf Lanart, now in question.

The will had been found in a small black grip floating in the water in Lanart's cabin on the wanigan which had sunk, and contained, besides the will in question, receipts and other valuable papers belonging to the deceased.



It also appears from the testimony and record in this case that the deceased led a lonely and desolate existence far removed from any of his relatives, including the claimants, and that he had not even heard from them for so many years that he states in the disputed document, "I don't think any relatives are alive."

All of the witnesses agree that he was, or appeared to be, a man past sixty years of age, and the fact that he made this purported will commencing with the words "After death" is at least presumptive proof, of the fact, that at his age and in his condition he contemplated death and intended to dispose of his property. No better proof of his lack of education and general ignorance of the prerequisites of disposing of his estate in a legal and orderly [13] manner is necessary than the instrument itself. From it we gather the general conclusion that it was written in contemplation of death and that he thereby intended to dispose of his estate. Wishing to do some good with what he had, and having no particular friends to whom he cared to leave his estate, and believing as he apparently did and as he states in the instrument, that he had no relatives living, and apparently casting about for a beneficiary upon whom to bestow what estate he had, that would do some good with it, he must have thought of the Red Cross as an agency or organization that did a lot of good in the world, and he therefore designated it as the

object of his bounty. This too is borne out by the language of the instrument itself, in which he recites, "Please forward all to Red Cross \* \* \* The (they) might be able to do some good with the little I have." Twice in the instrument the word "the" is used instead of "they" which he undoubtedly intended.

Lanart probably was ignorant of the legal name of the Red Cross, but knew it as thousands of others know it, by the name "Red Cross" and not "American National Red Cross," its real name. However, such a lack of knowledge as to the legal name of the Red Cross should not affect the validity of his will: The Red Cross is known throughout the world as a charitable organization, and there is only one Red Cross in this country that has the legal capacity to accept such a bequest and that is the American National Red Cross. It is the only Red Cross that deceased could have had in mind and the only one that he could have intended to make his beneficiary.

To contend, as do the claimant heirs, that he might have just as well meant the Canadian Red Cross or the Swedish Red Cross is, to our mind, wholly without [14] merit. The testator had never even been in Canada, so far as anyone knows, and he had been away from Sweden for more than thirty years; had no relatives living there as he apparently believed, from the wording of his will, and had long since severed all ties with that country.

He had lived in America for thirty years and had become an American Citizen nearly twenty years before his death, and it stands to reason that the only Red Cross he could have had in mind was the American Red Cross or the American National Red Cross, that being the only American organization known as "Red Cross" capable of accepting his bounty and it is inconceivable that he could have had any other Red Cross in mind.

Furthermore the apparent intent of the testator was to make a charitable gift or bequest to the Red Cross, and charitable gifts and bequests have always been favored by the law.

"The doctrine early became crystallized as a part of the common law of England that gifts to charitable uses should be highly favored and construed by the most liberal judicial rules, rather than that the gifts should fail and the intent of the donor fail of accomplishment. Charitable bequests are therefore liberally construed to carry into effect the intention of the testator and every presumption consistent with the language used will be indulged to assist."

28 R. C. L. Sec. 172.

The case most nearly in point that has been called to my attention or that I have been able to find is *American Bible Society et al vs American Colonization Society et al.* decided by the Supreme Court of New York, Vol. 1-2 N.Y.Sup. p. 774.

This was an action to construe the will of Sarah Bunce deceased. The court below entered judgment denying the American Colonization Society the right to recover a [15] portion of the estate of testatrix, and that society appealed. The facts requisite to an understanding of the case are as follows:

Sarah Bunce died in 1851 leaving a will dated July 16, 1833 and a codicil thereto dated October, 1859. The material part of the codicil on which the question in this case arises is as follows: "Sixthly: I give to my beloved niece Sarah B. Munsell and her husband Harry H. Munsell, for their joint lives my house and lot number 18 10th Street. On their death I direct the same to be sold by my trustee or any person to be appointed by the proper tribunal, of the State of New York, and the proceeds divided evenly among the following societies, to-wit: The American Bible Society, The American Tract Society, the New York Seamen's Friends Society and the American Colonization Society, all of or in the City of New York.

Macomber J. in delivering the opinion of the court said (inter alia):

"The right of the appellant American Colonization Society to the remaining one-fourth is contested by the other defendants, who are the next of kin of the testatrix, upon the ground that the appellant is not the beneficiary designated by the codicil.

The American Colonization Society existed as an unincorporated institution from about the year 1816 to the year 1831, when by an act passed at that time and by an amendatory act of 1837 it was incorporated by the legislature of the State of Maryland. It has always been known as a national organization, having auxiliaries in nearly all, if not all, of the states of the Union, with headquarters at Washington, D. C. It has never been known by any other name than the American Colonization Society.

There is no question or dispute made in regard to the identity of this particular corporation which asks for this portion of the estate of the deceased. Its identity is as distinctly established as that of either of the counsel in this case. Why then, the question arises, did the trial court refuse to award a portion of the decedent's estate to it? [16]

If its judgment can be maintained at all it must be upon the statement of the learned judge at the special term, who says: 'It is quite obvious that the testatrix intended that the bequest should not be to the appellant American Colonization Society but to the society which was organized in the State of New York as an auxiliary society.' There was a New York State Colonization Society which existed as an unincorporated institution long before, and

for six years after the execution of the codicil of the testatrix, and which was finally organized under that name by an act of the legislature of New York (Laws of 1853 p. 376).

The last named society was, of course, at the time of the writing of the codicil, incapable of taking the legacy because it was not incorporated, and consequently had no legal existence. Nor was it incorporated afterwards until after the death of the testatrix.

No argument is presented by the respondents denying the appellant's ability to take and hold bequests, but the contention in their behalf is simply that it is not the party designated in the will. It is to be observed that the expression 'all of or in the city of New York' is in no sense a part of the name of either of the corporations named in the instrument. Had the codicil said 'The American Colonization Society of the City of New York' some reasonable ground would be offered for the position taken by counsel for the next of kin of the testatrix.

Generally the designation of a corporation as being of a certain place constitutes a part of its legal name for the transaction of business, but in this instance there is no designation of the American Colonization Society as being of the City of New York. The expression used,

'all of or in the city of New York' is in the alternative, meaning a corporation either existing by law with headquarters at the city of New York, or having its headquarters elsewhere with a place of business in the city of New York, conducted by its agents or otherwise. But was not the appellant in every material sense in the City of New York within the meaning of the term which was evidently in the mind of the testatrix?

It was established by the evidence without dispute that the New York Colonization Society, both before and after incorporation, was a mere hand or means to enable the parent society, the American Colonization Society, to carry on its business which was the colonization of free colored persons upon the coast of Africa.

It was shown that the agents of the American Colonization Society organized the local society of the State of New York. Nearly all of [17] the expeditions carrying emigrants to Liberia sailed from the port of New York. All of the monies collected by the New York Colonization Society were forwarded to the American Colonization Society in Washington and expended by that corporation, and none of them were disbursed by the local or auxiliary society in the City of New York. Such also was the practice in other, if not all, of the states of the Union.

As the chief witness in the case says, the state organizations, whether incorporated or otherwise, were but the hand or agent by which the parent society conducted its work. Each of the state societies had representation under the rules established by the American Colonization Society fixed at the rate of one delegate to the annual conventions for every sum of \$500.00 subscribed in the particular state. Hence it is that if the parent society were obliged to show that it was in a literal sense in the city of New York, we think the evidence was sufficient to warrant the testatrix's use of that expression as a matter of description of the objects of her bounty.

But it is not necessary to put our decision upon that ground. It is sufficient that the appellant appears as the accurately described person named in the will and is capable of taking the bequest, and that there is in point of fact no question arising as to whom the testatrix intended to designate as her legatee. Any different conclusion would be to assume that the testatrix did not mean what she wrote and to impart into the codicil an intention which is not only foreign to its entire scope and particular purpose but which even does violence to its plain reading, and this too for the purpose, not of upholding, but of defeating the legacy.



This is not construing but destroying the will. Indeed, so definite is the person of the legatee and so perspicuous and unmistakable the gift that the case is hardly one which requires the court to construe the instrument, in the ordinary meaning of the phrase.

The error of the learned judge at the trial seems to be that the intended beneficiary was one which must have a legal residence in the city of New York; but in cases of mere misdescription of residence alone the legacies do not fail where the person intended is definite and certain (*LeFevre vs. LeFevre*, 59 N.Y. 434; *St. Luke's Home vs Association*, 52 N.Y. 191. To this extent the judgment should be reversed and the judgment modified so as to permit the appellant to take its share of the estate." [18]

We consider this case directly in point. The gift or bequest in this case is made to the "Red Cross." The only Red Cross capable of accepting the bequest is the American National Red Cross, a national organization having local branches in every state and in every hamlet of any size in the United States. It is generally known simply as the "Red Cross" and very few people know it by its true name. As stated by Judge Macomber, "Its identity is as distinctly established as that of either of the counsel in this case." Like the American Colonization Society, it has always been known as a

national organization with headquarters in the City of Washington and auxiliaries or local societies throughout the nation. Like the American Colonization Society all monies collected by its auxiliaries or branches are forwarded to the parent organization, the American National Red Cross, at Washington, and disbursed by that corporation through its local or auxiliary societies or branches throughout the states of the Union. Like it, again, the state and local organizations of the American National Red Cross are but the hand or agent by which the parent society conducts its work, and the real beneficiary (the American National Red Cross) is as accurately described by calling it the "Red Cross," if not in fact infinitely better described, than it would have been had it been described by its legal designation.

It is hardly to be expected that the ordinary individual, particularly one of the limited education of Gustaf Lanart, would be as careful in describing his beneficiary as was Charles Carroll in describing himself when he signed the Declaration of Independence, and identifying himself as "Charles Carroll of Carrollton."

In point also is the case of State of South [19] Dakota appellant vs American National Red Cross, reported in 245 N.W. at p. 399, decided November 28, 1932.

In that case the testator, Theodore Engles made his last will and testament containing the following provision:

“Fourth. The balance of my property, both real and personal, I give and bequeath to Red Cross Society.”

It is contended by the American National Red Cross that the real estate passes to it under the fourth paragraph or residuary part of said will. The State of South Dakota contends that said real estate passes to it (the State) for want of legal heirs. Five propositions were presented for consideration in the trial court, among which were:

“Three. Is the language designating the residuary devisee, to-wit, Red Cross Society, sufficiently definite to identify the American National Red Cross?

Four. Can the American National Red Cross receive bequests and devises under its charter?

Fifth. Can the American National Red Cross receive bequests and devises by way of charitable use or trusts?”

In addition to the American National Red Cross of Washington D. C. filing its petition in intervention, the Wakonda branch of the Clay County Chapter of the American National Red Cross claimed that it was entitled to all of the residue under the quoted provisions of said will.

The Circuit Court found in favor of the intervenors, the American National Red Cross of Washington, D. C. to the effect that it was entitled to the property in controversy, and from that decision appeal was taken.

Warren, J. in delivering the opinion of the court, states: [20]

“Appellant urges the failure of the testator to specifically name and identify the beneficiary in the residuary clause, in that he used the term ‘Red Cross Society;’ that the designation is so uncertain that it may mean the American National Red Cross of Washington D. C. or it may mean the local chapter of the Red Cross, of which he was a member, and that it is therefore most likely that he wished to bestow the gift upon the local organization. Appellant further urges that the language is insufficient to pass the land to the Red Cross Society, in that the testator used only the words ‘give and bequeath’ and failed to use *use* the usual term ‘devise.’ An investigation of authorities as to what particular society testator had in mind seems to indicate that the words ‘Red Cross Society’ mean the national organization. See American National Red Cross vs. Felzner-Post 1928, 86 Indiana Appeals 709, 159 N.E. 771. The belief is strengthened by the wording of the congressional act or charter creating the American National Red Cross (36 USCA. Sec. 1 et seq.),

36 USCA. Sec. 4 of said act of Congress being as follows:

‘It shall be unlawful for any person \* \* \* \* \* to use within the territory of the United States of America and its exterior possessions the

emblem of the Greek red cross on a white ground, or any sign or insignia made or colored in imitation thereof, or of the words 'Red Cross' or 'Geneva Cross' or any combination of these words.'

It would therefore seem that there is some presumption at least when one speaks of the 'Red Cross' or of the 'Red Cross Society' that the speaker, when not limiting and specifically pointing out the fact that he has in mind a different organization such as the local chapter, he means the American National Red Cross. If it were the wish of the testator to bestow upon the Wakonda branch of the Clay County Chapter of the Red Cross it is quite natural that he would have used approximate language to refer directly by name to some suitable way of designating the local chapter or organization. We feel that the learned trial court was fully justified under the evidence in so finding, and that we are not warranted in disturbing the findings and conclusions as to the intention of the testator."

It has also been held by the appellate court of Indiana in *American National Red Cross vs Felzner-Post Inc.* 159 N.E. 771, under Burns Ann. St. 1926 Sec. 244 U.S. Statutes [21] are part of law governing state, and appellate court takes judicial notice of them.

"The Courts take judicial notice that American National Red Cross is a corporation by

Act of Congress January 5, 1905 (36 USCA. Sec. 1 et seq.); and of its activities; that it has authority to accept bequests for certain purposes, that it is required to organize subordinate agencies, and that county chapters thereof are its local agents, through which it acts and for which it is responsible.”

“Courts also take judicial notice of regulations of governmental and quasi governmental agencies and of provisions and charters of private corporations discharging public charitable functions.”

The Territorial Court of Alaska also takes judicial notice of these matters under the law.

Note: It appears that the attorney for the American National Red Cross has used the name “American National Red Cross Society” in prosecuting the proceedings herein on behalf of the American National Red Cross. This I am advised was done through inadvertence or mistake, and permission is hereby given to amend the proceedings herein by substituting the name of “American National Red Cross” wherever “American National Red Cross Society” is used.

The Court therefore holds that the document in question is the holographic will of Gustaf Lanart, deceased; that the testator was of sound mind, over twenty-one years of age and not acting under any fraud, duress or undue influence; that said will was and is entitled to probate as such; and that

by its terms the testator has willed to the American National Red Cross his entire estate.

Findings and Decree may be prepared accordingly.

Done in open court this 15th day of July, 1939.

GEO. F. ALEXANDER

Judge.

[Endorsed]: Filed July 15, 1939. [22]

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[Title of District Court and Cause.]

FINDINGS OF FACT.

This cause coming on regularly to be heard upon the 15th day of July, 1939, upon the appeal of American National Red Cross from the decision of the United States Commissioner, ex-officio Probate Judge, dated February 9, 1938, such decision being entitled "Order setting aside purported will admitted to Probate and Decree Admitting the Claims of Erik Einar Krister Lofskog and Swan-hild Sally Wilhelmina Abrahamson as sole heirs therein, "appellant being represented by its attorney Frank H. Foster; appellees being represented by their attorneys Faulkner & Banfield and Grover C. Winn; and the court having heretofore heard the testimony adduced by the parties, the argument of counsel for the respective parties and having read the briefs submitted by them and being fully informed in the premises, finds the following facts:

1. That Gustav Lanart died *as* Gambier Bay, Admiralty Island First Division, Territory of Alaska, on or about the 10th day of December, 1936, leaving personal property of the value of approximately \$8,000 in cash and stocks in Juneau Precinct and within the jurisdiction of this court.

2. That among the effects of deceased, a document in writing was found in words and figures as follows:

“After Death

Please forward all to Red Cross, as I dont think any relatives are alive, the might be able able to do some good with the little I have

Gambier Bay,

Oct 22, 1932

GUS LANART. [23]

Eagles aerie No. 1, Seattle, will take care of the burial.

What is not mentioned in this will belong to PAF Bellingham the are the owners.”

3. That the instrument set forth was written wholly in the handwriting of deceased.

4. That at the time of the making of said instrument Gustav Lanart was of legal age and of sound mind.

5. That Gustav Lanart died leaving no wife or lineal *decendants*.

6. That American National Red Cross is a corporation duly chartered under Act of Congress,



for charitable purposes, and is authorized to receive bequests.

7. That by the term "Red Cross" as used in said instrument testator meant to designate American National Red Cross.

8. That the intent of deceased in making the instrument set forth herein, was to bequeath all his property to American National Red Cross.

9. That said instrument is a valid holographic will and has not been revoked or altered by codicil or otherwise.

From the foregoing facts, the court makes the following

#### CONCLUSIONS OF LAW:

1. That the Honorable Probate Court of Juneau Precinct, First Division, Territory of Alaska, erred in making its order entitled "Order setting aside purported Will admitted to Probate and Decree admitting the claims of Erik Einar Kristen Lofskog and Swanhild Sally Wilhelmina Abrahamson as sole heirs therein"

2. That American National Red Cross is entitled to a decree to the effect that it is the sole devisee under the will of [24] Gustav Lanart and directing that the Honorable Probate Court of Juneau Precinct, First Division of Alaska proceed to the settlement of this estate in accord with this opinion.

3. That the instrument offered in evidence and set forth in paragraph ..... of the above findings,

is a valid holographic will under the laws of the Territory of Alaska.

Dated at Juneau, Alaska the 24 day of July, 1939.

GEO. F. ALEXANDER

District Judge.

[Endorsed]: Filed July 24, 1939. [25]

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In the District Court of the Territory of Alaska,  
First Division, at Juneau.

No. 4182-A

In the Matter of the estate

of

GUSTAV LANART, deceased.

DECREE.

The above entitled cause coming on regularly to be heard upon the 15th day of July, 1939 upon the appeal of American National Red Cross from a decision of the United States Commissioner, ex-officio Probate Judge in and for Juneau Precinct, First Division of Alaska, dated the 9th day of February 1938, such decision being entitled "Order setting aside purported Will admitted to Probate and Decree Admitting the Claims of Erik Einar Krister Lofskog and Swanhild Sally Wilhelmina Abrahamson as sole heirs therein" Appellants being represented by its attorney Frank H. Foster and appel-

lees being represented by their attorneys Faulkner & Banfield and Grover C. Winn and the court having heard the testimony adduced by the parties and the argument of counsel and having made and entered herein its Findings of Fact and Conclusions of Law: It is now

Ordered, Adjudged and Decreed: That the order of Feb. 9, 1938, above named, be and the same is set aside and declared as naught: That American National Red Cross is hereby declared to be the sole devisee and entitled to inherit all of the estate of Gustav Lanart, deceased: That the holographic will of Gustav Lanart dated Oct. 22, 1932, is a valid will and entitled to probate as such; That the proceedings heretofore had in the court of the United States Commissioner, ex-officio Probate Court for Juneau Precinct, First Division, Territory of Alaska, admitting the will of Gustav Lanart, be reinstated [26] and that further proceedings be had therein not in conflict with this decree.

Dated at Juneau, Alaska, July 24, 1939.

GEO. F. ALEXANDER,  
District Judge.

Entered Court Journal No. 12, page 486.

[Endorsed]: Filed July 24, 1939. [27]

[Title of District Court and Cause.]

EXCEPTIONS TO FINDINGS OF FACT, CONCLUSIONS AND DECREE ENTERED, AND TO REFUSAL OF COURT TO ENTER CLAIMANT'S PROPOSED FINDINGS AND CONCLUSIONS AND DECREE.

Come now Erik Enar Krister Lovskog and Svanhild Sally Vilhelmina Abrahamsson nee Lovskog, claimants of the property of the estate of Gustaf Lanart, deceased, and file this their exceptions to the Findings of Fact, Conclusions of law and Decree entered herein:

I.

Claimants except to Finding No. 2 upon the ground that it is not supported by the evidence.

II.

Except to Finding No. 7 upon the ground that the same is not supported by the evidence and is contrary to law.

III.

Except to Finding No. 8 upon the ground that said finding is contrary to law and to the evidence in this case.

IV.

Except to Finding No. 9 as contrary to law and the evidence.

V.

Except to Conclusion of Law Nos. 1, 2, and 3 upon the ground that they are contrary to law and not supported by the evidence. [28]

VI.

Except to the Decree upon the ground that it is contrary to law and not supported by the evidence.

VII.

Except to the court's refusal to sign and enter the claimant's proposed findings of fact, conclusions of law, decree and order.

Dated at Juneau, Alaska, July 22nd, 1939.

FAULKNER & BANFIELD

GROVER C. WINN

Attorneys for Claimants above  
named.

Exceptions allowed this 24 day of July, 1939.

GEO. F. ALEXANDER

Judge.

Entered Court Journal No. 12 page 487

[Endorsed]: Filed July 24, 1939. [29]

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[Title of District Court and Cause.]

PETITION FOR APPEAL.

Come now Erik Enar Krister Lovskog and Svanhild Sally Wilhelmina Abrahamsson, appellees herein, and feeling themselves aggrieved by the decision, judgment and decree by this court made, signed and entered in this court and cause on July 24, 1939, wherein the court held that that certain document in writing, which reads as follows:

“After Death

Please forward all to Red Cross, as I dont think any relatives are alive, the might be able to do some good with the little I have

Gambier Bay,

Oct. 22, 1932

GUS LANART.

Eagles Aerie No. 1 Seattle will take care of the burial.

What is not mentioned in this will belong to PAF Bellingham the are the owners.”

and which is set forth in the Findings, is the last will and testament of Gustav Lanart, deceased; that it is a valid *olographic* will and entitled to be admitted to probate in the Probate Court for the Territory of Alaska, Division Number One, at Juneau, and in which said judgment and decree the court set aside the order of the Probate Court for the Juneau Precinct, Territory of Alaska, dated February 9, 1938, denying admission to probate of such document, do hereby appeal from such final judgment and decree, and the whole and every part thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignments of Error filed herewith; and pray that such appeal be allowed; and further pray that the court herein fix the amount of the [30] cost bond to be given by appellants on appeal; and further pray that upon the filing of such bond, all further proceedings be stayed herein pending such

appeal, and that a time be fixed by the court for the preparation and settlement of the bill of exceptions in this cause.

ERIK ENAR KRISTER LOVSKOG

By H. L. FAULKNER

His Attorney

SVANHILD SALLY WILHELMINA

ABRAHAMSSON

By GROVER C. WINN

Her Attorney

Copy received this 29 day of July, 1939.

FRANK H. FOSTER

Attorney for Appellant.

[Endorsed]: Filed July 29, 1939. [31]

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[Title of District Court and Cause.]

ORDER ALLOWING APPEAL.

In consideration of the petition of appellees herein for allowance of appeal to the Circuit Court of Appeals for the Ninth Circuit, in the above entitled cause, and the court being fully advised in the premises;

It is hereby ordered that the said petition for appeal be, and the same is hereby allowed, and that transcript of the record in said cause, duly authenticated, may be prepared and forwarded, pursuant to law and the rules of the court, to the United States Circuit Court of Appeals for the Ninth Cir-

cuit at San Francisco, California, by the clerk of this court; and,

It is further ordered that the cost bond on behalf of the appellees is hereby fixed in the sum of \$500.00, conditioned that the appellees will answer for all damages and costs if they fail to make their plea good, and that such bond be given with two approved sureties, to be approved by either the judge of the above entitled court or the clerk thereof; and that upon the giving of said bond and approval of same, further proceedings be stayed herein;

It is further ordered that appellees shall have until September 2nd, 1939, within which to prepare, file and settle Bill of Exceptions herein.

*Dates* and signed in open court in Juneau, Alaska, this 29th day of July, 1939.

GEO. F. ALEXANDER

Copy received, July 29, 1939.

FRANK H. FOSTER

Attorney for Appellant.

Entered in Court Journal No. 12 page 499

[Endorsed]: Filed July 29, 1939. [32]

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[Title of District Court and Cause.]

#### ASSIGNMENTS OF ERROR.

Come now Erik Enar Krister Lovskog and Svanhild Sally Vilhelmina Abrahamsson by their attorneys Faulkner & Banfield and Grover C. Winn,



and make and file the following Assignments of Error upon which they will rely in prosecuting their appeal in the above entitled action to the Circuit Court of Appeals for the Ninth Circuit:

### I.

The court erred in making and entering Finding of Fact No. 7, which reads as follows: "That by the term "Red Cross" as is used in said instrument, testator meant to designate American National Red Cross", to which Finding appellees excepted and had an exception allowed; for the reason that such Finding No. 7 is contrary to the law and not supported by any evidence.

### II.

The court erred in making and entering Finding of Fact No. 8, which is as follows: "That the intent of deceased in making the instrument set forth herein, was to bequeath all his property to American National Red Cross," to which Finding appellees excepted and had an exception allowed; for the reason that the same is not supported by any evidence and is contrary to law.

### III.

The court erred in making and entering Finding of Fact No. 9, which reads as follows: "That said instrument is a valid olographic will and has not been revoked or altered by [33] codicil or otherwise," to which Finding appellees excepted and had

as exception allowed; for the reason that the same is not supported by any evidence and is contrary to law.

## IV.

The court erred in making and entering its Conclusion of Law No. 1, which reads as follows: "That the Honorable Probate Court of Juneau Precinct, First Division, Territory of Alaska, erred in making its order entitled 'Order setting aside purported Will admitted to Probate and Decree admitting the claims of Erik Einar Kristen Lofskog and Swanhild Sally Wilhelmina Abrahamson as sole heirs therein,'" to which Conclusion appellees excepted and had an exception allowed; for the reason that the same is contrary to law and not supported by any evidence.

## V.

The court erred in making and entering its Conclusion of Law No. 2, which reads as follows: "That American National Red Cross is entitled to a decree to the effect that it is the sole devisee under the will of Gustav Lanart and directing that the Honorable Probate Court of Juneau Precinct, First Division of Alaska proceed to the settlement of this estate in accord with this opinion," to which Conclusion appellees excepted and had an exception allowed; for the reason that the same is contrary to law and not supported by any evidence.

## VI.

The court erred in making and entering its Conclusion of Law No. 3, which reads as follows: "That

the instrument offered in evidence and set forth in paragraph ..... of the above findings, is a valid holographic will under the laws of the Territory of Alaska," to which Conclusion appellees excepted and had an exception allowed; for the reason that the same is contrary to law and not supported by any evidence. [34]

#### VII.

The court erred in making, signing and entering its decree herein dated July 24, 1939, setting aside the order of the Probate Court for the Juneau Precinct, Alaska, entered February 9, 1938, which had in turn set aside an order previously entered in such Probate Court admitting a certain paper memorandum to probate as the will of Gustav Lanart, deceased, and in which order of February 9, 1938, the Probate Court had decreed the brother and sister of deceased, Erik Enar Krister Lovskog and Svanhild Sally Wilhelmina Abrahamsson, to be the sole heirs of Gustav Lanart, deceased, and held that the alleged and purported holographic will of Gustav Lanart was not entitled to probate.

#### VIII.

The court erred in making and signing that part of its decree herein, dated July 24, 1939, ordering and adjudging that the American National Red Cross is the sole devisee and entitled to inherit all the estate of said Gustav Lanart, deceased, and that the alleged and purported holographic will is a valid will and entitled to probate as such, and

ordering the Probate Court for the Juneau Precinct to admit it to probate.

### IX.

The court erred in refusing to make, sign and enter Finding of Fact No. II requested by appellees, which reads as follows: "That in October 1936 the said Gustaf Lanart brought from Gambier Bay, where he lived, to Juneau, Alaska, to the B. M. Behrends Bank and left with the bank for safe-keeping, without any directions as to its ultimate disposal in case of his death, a package containing some stocks and bonds, seaman's discharge papers, two bank books, naturalization certificate and certain receipts." [35]

### X.

The court erred in refusing to make, sign and enter Finding of Fact No. III requested by appellees, which reads as follows: "That some time in December 1936, after the death of Gustaf Lanart at Gambier Bay, Alaska, certain papers were found at Gambier Bay which had formerly belonged to him and which consisted of bills, folders, radio advertisements and other unimportant and valueless papers, and, among them, some pages of a small notebook, all of which papers and said pages of the notebook had apparently been floating in the water and had been wet and dried out. That the pages of the notebook were not complete, and some of them were missing, and they were loose, and that

on some of the pages of said notebook were found lists of personal property, and on one of the pages there was written, in the handwriting of deceased, as follows:

‘After Death

Please forward all to Red Cross, (as i don’t think any relatives are alive,) the might be able to do some good with the ..... i have

Gambier Bay

Oct 22, 1932

GUS LANART

Eagles aerie No. 1 Seattle will take care the burial

What is not mentioned in this will belong to PAF Bellingham the are the owners’ ”

XI.

The court erred in refusing to make, sign and enter Finding of Fact No. IV requested by appellees, which reads as follows: “That deceased, before the date of his death and at the time the writing hereinabove last referred to was written, was a watchman at an old cannery at Gambier Bay belonging to the Pacific American Fisheries company, and often referred to as the “PAF”. [36]

XII.

The court erred in refusing to make, sign and enter Finding of Fact No. V requested by appellees which reads as follows: “That deceased was at the

time of his death unmarried, and left surviving him as his sole heirs-at-law and distributees, his brother Erik Enar Krister Lovskog, and his sister Svanhild Sally Vilhelmina Abrahamsson nee Lovskog.”

### XIII.

The court erred in refusing to make, sign and enter Finding of Fact No. VI requested by appellees which reads as follows: “That said writing in the loose pages of the notebook aforesaid did not constitute a last will and testament of deceased, and the same is not entitled to probate”.

### XIV.

The court erred in refusing to make, sign and enter the Conclusion of Law proposed by appellees which reads as follows: “That the writing in the notebook which has been offered as the last will and testament of deceased is not entitled to probate and the order of the Probate Court of the Juneau Precinct, Territory of Alaska, of February 9, 1938, is a valid order and should remain in full force and effect and appellant’s appeal should be dismissed.

### XV.

The court erred in refusing to make, sign and enter the Decree and Order proposed by claimants-appellees to the effect that the document set forth in Assignment No. X is not a valid holographic will and not entitled to probate. [37]

Dated at Juneau, Alaska, July 29th, 1939.

FAULKNER & BANFIELD

H. L. FAULKNER

GROVER C. WINN

Attorneys for Appellees.

Service admitted July 29, 1939.

FRANK H. FOSTER

Attorney for American Na-  
tional Red Cross.

[Endorsed]: Filed July 29, 1939. [38]

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[Title of District Court and Cause.]

CITATION.

The President of the United States of America,  
To American National Red Cross, appellant herein,  
and to Frank Foster, its attorney of record:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit in the City of San Francisco, California, within thirty days from the date hereof, pursuant to an order allowing an appeal entered in the office of the clerk for the District Court of the Territory of Alaska, Division No. 1, at Juneau, wherein American National Red Cross is appellant and Erik Enar Krister Lovskog and Svanhild Sally Wilhelmina Abrahamsson are appellees; and to show cause, if any there be, why the judgment mentioned in said appeal should

not be corrected and speedy justice be done to the parties in that behalf.

Witness the Hon. Charles Evans Hughes, Chief Justice of the Supreme Court of the United States, and the seal of the District Court, Territory of Alaska, Division No. 1, this 29th day of July, 1939.

GEO. F. ALEXANDER

District Judge

Attest:

ROBT. E. COUGHLIN

Clerk of the District Court,  
Territory of Alaska, Division No. 1

Service of the foregoing Citation admitted this 29 day of July, 1939.

FRANK H. FOSTER

Attorney for Appellant American National Red Cross

Entered in Court Journal No. 12 Page 499

[Endorsed]: Filed July 29, 1939. [39]

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[Title of District Court and Cause.]

COST BOND ON APPEAL.

Know all men by these presents, that we, Erik Enar Krister Lovskog and Svanhild Sally Vilhelmina Abrahamsson, as principals, and Anna Winn and Charles Waynor, as sureties, are held and firmly bound unto the American National Red



Cross in the sum of Five Hundred Dollars (\$500.-00), to be paid to it and for which payment well and truly to be made, we bind ourselves, and each of us, and each of our heirs, executors, administrators and successors, jointly and firmly by these presents.

Sealed with our seals and dated this 29th day of July, 1939.

The condition of the above obligation is such that whereas the above bounden principals as appellants seek to prosecute their appeal in the United States Circuit Court of Appeals for the Ninth Circuit to reverse the Findings and Decree made by the above entitled court on July 24th, 1939, to which reference is hereby made;

Now, therefore, if the above named appellants shall prosecute their appeal to effect and shall answer for and pay all costs and damages that may be awarded against them, if they fail to make their plea good, then this obligation shall be void, otherwise to remain in full force and effect. [40]

ERIK ENAR KRISTER LOVSKOG

By H. L. FAULKNER

His Attorney

SVANHILD SALLY VILHELMINA  
ABRAHAMSSON

By GROVER C. WINN

Her Attorney

(Principals)

ANNA WINN

CHARLES WAYNOR

(Sureties)

United States of America,  
Territory of Alaska.—ss.

We, the undersigned, Anna Winn and Charles Waynor, whose names are subscribed to the foregoing bond as sureties thereon, being first severally duly sworn, each for himself and not one for the other, depose and say: That we are residents of the Territory of Alaska, over the age of twenty-one years, and not in any manner interested in the foregoing action or the outcome thereof, that neither of us is an attorney, counselor at law nor officer of any court; and that we are each worth the sum of \$500.00 over and above all our just debts and liabilities, exclusive of property exempt from execution.

ANNA WINN

CHARLES WAYNOR

Subscribed and sworn to before me this 29th day  
of July, 1939.

[Notary Seal] N. C. BANFIELD

Notary Public for Alaska.

My commission expires Aug. 6, 1942. [41]

ORDER

Now, on this day, it is hereby ordered, that the foregoing cost bond on appeal be, and the same is hereby approved as to amount and sufficiency of sureties; and

It is further ordered that all further proceedings shall be stayed herein pending the appeal to the Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 29th day of July, 1939.

GEO. F. ALEXANDER

Judge.

Entered Court Journal No. 12, page 500.

[Endorsed]: Filed July 29, 1939. [42]

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[Title of District Court and Cause.]

STIPULATION RE PRINTING TRANSCRIPT  
OF RECORD

It is stipulated between counsel for the respective parties hereinabove named that in printing the record in this cause for use in the Circuit Court of Appeals for the Ninth Circuit, all captions should be omitted after the title of the cause has been once printed, and the words "caption" and "title" and the name of the paper or document should be substituted therefor. All other parts of the record should be printed.

Dated at Juneau, Alaska, this 5th day of August, 1939.

H. L. FAULKNER

N. C. BANFIELD

Attorneys for Erik Enar  
Krister Lovskog.

GROVER C. WINN

Attorney for Svanhild Sally  
Vilhelmina Abrahamsson.

FRANK H. FOSTER

Attorney for American  
National Red Cross.

[Endorsed]: Filed Aug. 5, 1939. [43]

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[Title of District Court and Cause.]

### STIPULATION RE EXHIBITS

It is hereby stipulated and agreed by and between Faulkner & Banfield and Grover C. Winn, attorneys for appellants hereinabove named, and Frank H. Foster, attorney for appellee, American National Red Cross, that since it is necessary for the Circuit Court of Appeals to examine the original exhibits Nos. 1, 3, and 4 in order to determine the questions of law arising upon the appeal herein, that the originals of the same, as introduced in the trial court, be transmitted by the Clerk of the Court to the Circuit Court of Appeals for the Ninth Circuit for examination by the court; and that Exhibit

No. 2, consisting of a number of checks, need not be transmitted nor become a part of the record for the reason that such exhibit is not pertinent to any assignment of error.

Dated at Juneau, Alaska, August 5th, 1939.

H. L. FAULKNER

N. C. BANFIELD

GROVER C. WINN

Attorneys for Appellants.

FRANK H. FOSTER

Attorney for Appellee.

[Endorsed]: Filed Aug. 5, 1939. [44]

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[Title of District Court and Cause.]

### BILL OF EXCEPTIONS

Be it remembered, that on May 31, 1938, this matter came on regularly for trial and hearing before the court without a jury, the Hon. Geo. F. Alexander, Judge, presiding, and all parties being represented by counsel, whereupon the following proceedings were had:

Appellant's Witness,

GUY McNAUGHTON, '

being first duly sworn, testified:

Direct Examination

My name is Guy McNaughton. I am vice-president of the B. M. Behrends Bank. I knew Gus

(Testimony of Guy McNaughton.)

Lanart in his lifetime, and he had an account at our bank. I know the signature and handwriting of Gus Lanart, and the signature and handwriting on the purported will or memo handed me is the signature and handwriting of Gus Lanart. There is no question in my mind that this memo and purported will is in the handwriting of Gus Lanart.

(Whereupon said purported will or memorandum was admitted in evidence, together with some leaves of a notebook, and marked "Exhibit 1", and reads as follows:

#### APPELLANT'S EXHIBIT 1

"After Death

Please forward all to Red Cross, (as i don't think [45] any relatives are alive,) the might be able to do some good with the.....i have

Gambier Bay

Oct 22 1932

GUS LANART

Eagles aerie No 1 Seattle will take care the burial

What is not mentioned in this will belong to PAF Bellingham the are the owners")

I knew Gus Lanart for eight or ten years. I knew him in 1932 at the time the purported will was dated. I saw him just once in awhile when he came to the bank; I don't know how often. He was of sound mind, with no peculiarities.

(Testimony of Guy McNaughton.)

Cross Examination

I could not say how often I saw him. He came to the bank occasionally. He was mostly employed at canneries as a watchman, and he did not come in often, but when he came in, he would usually come to the bank. I don't know whether I saw him in 1932 or 1934.

(Thereupon, without objection, there was introduced

APPELLANT'S EXHIBIT 3,

which is a letter from J. Edgar Hoover and which reads as follows:

“John Edgar Hoover

Director

Federal Bureau of Investigation

United States Department of Justice

Washington, D. C.

April 7, 1938.

Mr. H. J. Hughes,

American National Red Cross Society,

Washington, D. C.

Dear Mr. Hughes:

Reference is made to your visit to this Bureau on March 15, 1938, at which time you submitted for examination a document purported to be the will of one Gustav Lenart, together with several [46] items of correspondence relating thereto.

(Testimony of Guy McNaughton.)

In accordance with your request, the purported will has been examined and the examiner reports that in his opinion the text of the will reads as follows: 'Please forward all to Red Cross (as I don't think any relatives are alive) the *migth* be able to do some good with the little I have.' As of possible interest there is transmitted herewith a photograph which shows this partially obliterated writing somewhat more clearly than does the original document.

The purported will submitted for examination, together with the related correspondence, is being returned to your office by special messenger today, photographic copies of the will having been retained for the completion of this Bureau's file.

Assuring you of my desire to be of assistance, I am

Sincerely yours,

JOHN EDGAR HOOVER

Enclosure

Director''

(Thereupon, there was introduced, without objection,

APPELLANT'S EXHIBIT 4,

which is a violet-ray copy of the memorandum or purported will contained in Exhibit No. 1.)



(Testimony of Guy McNaughton.)

(Thereupon, appellant recalled witness

GUY McNAUGHTON,

who testified as follows:

Direct Examination

At the time Gus Lanart died, he looked like a man of 65 years of age. So far as I know he was of sound mind in 1932. I never knew anything to the contrary.

Appellant Rests.

---

APPELLEES' CASE IN CHIEF:

GUY McNAUGHTON,

recalled as witness on behalf of appellees further testified as follows: [47]

Direct Examination

I am administrator of the estate of Gus Lanart, appointed by the Probate Court for the Juneau Precinct, and have been administrator ever since probate proceedings were commenced. I am vice-president and cashier of the B. M. Behrends Bank. Gus Lanart came to the bank in October 1936. He died in December 1936. In October 1936 he brought some papers to the bank, consisting of some stocks, two bonds, two bank books, various receipts and naturalization papers. When he first brought them in, they were not contained in anything, but were open, and he handed them to Mr. Morrison in that

(Testimony of Guy McNaughton.)

manner. Mr. Morrison told him he would not accept them that way, but to have them wrapped up and we would keep them. The box remained in the bank. After he died and I was appointed administrator, I went to Gambier Bay where he had lived. Judge Felix Gray, Probate Judge, and Mr. Monagle, attorney, went with me. We went aboard the wanigan where he lived. That was a complete wreck, submerged at high tide. We got in the boat and went up to a fox farmer's house there—I can't remember the name. They had a little bundle of papers given them by Mr. and Mrs. Matthews—a little package. Among the papers were clippings and one thing and another and this memorandum book. The woman who had these things claimed to have received them from Mr. or Mrs. Matthews. They were all stuck together and wet and showed evidence of having been submerged. They looked like they had been in the water. The memorandum book in which the alleged will is contained was the only thing of any value or use. The memorandum book is in the same condition now except that it has been dried out. It was wet then. When it was found, there was just some loose pages. We found them and opened them up. The staple was put in afterward. It wasn't there when we found it. In that memorandum book is a list of guns and various things. He lived [48] on a wanigan, a house built on a scow. This wanigan was in bad condition. The bow was tied at one end on the beach, and it

(Testimony of Guy McNaughton.)

was sloping down, and when the tide came in, it would wash clear inside. Everything was awash and a shambles inside.

Lanart for a number of years was supposed to be a watchman at the cannery there of the Pacific American Fisheries, otherwise known as the PAF. The pages of the little memorandum book were all wet and stuck together and have been dried out since. The book I refer to as the memorandum book is the one with the purported will in it. It is a little pocket memo book of some kind.

---

JOHN MORRISON, JR.,

called as a witness on behalf of the appellee, being duly sworn, testified as follows:

Direct Examination

I live in Juneau, Alaska, and have lived here since 1923, and work at the B. M. Behrends Bank, having been there since 1926. I am the bank teller. I knew Gus Lanart in October 1936 when he came to the bank and transacted some usual business. At that time he gave me a bundle of papers he wanted me to keep safely. They looked like they were more or less valuable, and I would not accept them. He went out and got one of those little metal boxes, locked it up and brought them to the bank. It was sealed and locked, and we kept it in the bank until he died. In the box were stocks, bonds, cer-

(Testimony of John Morrison, Jr.)

tificates of more or less value. I was not present when it was opened. It was sealed and locked, and I gave him a receipt for a sealed package. He told me he was leaving it there for safekeeping. He didn't tell me to give it to anyone nor how to dispose of it, but just to keep it for him. We didn't open it or do anything with it until after he died.

[49]

#### Cross Examination

I knew who Gus Lanart was, he had been to the bank at different times, but I couldn't say how far back I was personally acquainted with him. He spent most of his time out of town. He behaved as a sane person, and there wasn't anything wrong with him, to my knowledge. I would say he was along in the sixties, from my observation.

---

#### M. E. MONAGLE,

called as a witness on behalf of appellee, being duly sworn, testified as follows:

#### Direct Examination

My name is M. E. Monagle. I am an attorney and a member of the bar of this court. I have been practicing since January 1930. Mr. R. E. Robertson and myself are attorneys for Guy McNaughton, administrator for the estate of Gus Lanart, who died December 10, 1936.

(Testimony of M. E. Monagle.)

Shortly after he died, Mr. Gray, the Probate Judge, Mr. McNaughton and myself made a trip to Gambier Bay, where Lanart had died. Before going there, we went over Lanart's assets in Juneau. They were in a little safety box—a little tin box eight or ten inches long, three or four inches wide and about three inches high. They were in the bank, this box was, locked up and sealed.

The box contained some stocks, diversified trustees' shares, Packard Motor stock certificates, two other stock certificates, two bank books, quite a number of receipts, and citizenship papers. The box was opened before we went to Gambier Bay. When we went to Gambier Bay, we found nothing of any value, just the wanigan. At Gambier Bay some papers were given us in Mrs. Campbell's house. Mrs. Campbell was there and Mrs. Matthews. [50] Mrs. Matthews was the one who gave it to Judge Gray in a house on a fox island where the Campbells were living. We don't know anything about where these things were found, except from what they told us about it. There was a little handful of papers—I would say forty or fifty papers, most of them bills, advertisements and radio folders, etc. There was nothing of any value. The judge and Mr. McNaughton and I went through them and there was nothing of any value at all. This memorandum book was the only thing that looked like it might be of importance. It was all watersoaked and still wet when we got it. The

(Testimony of M. E. Monagle.)

pages were stuck together. The pages were loose. The staple which is now through them was put there by Judge Gray afterward so none of the pages would be lost. There was no back on the book at the time.

---

ROBERT E. COUGHLIN,

called as a witness on behalf of the appellee, being first duly sworn, testified as follows:

Direct Examination

My name is Robert E. Coughlin, and I am Clerk of the United States District Court, Territory of Alaska, First Division, and have charge of naturalization records. I have the naturalization record of Gus Lanart, who was naturalized December 16, 1918. The record shows that his original name was Gustaf Lanart Lofskog, and the record shows that at the time he was naturalized his name was changed to Gustaf Lanart.

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Whereupon, the court, having taken the case under advisement and having on July 15, 1939, rendered its memorandum decision herein; and on July 22d, 1939, the following proposed [51] Findings of Fact, Conclusions of Law and Decree were presented to the court by appellees, which were refused by the court:

“[Title of District Court and Cause.]

CLAIMANTS' PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW

This cause came on regularly to be heard on May 31, 1938, before the court upon the appeal from the Probate Court at Juneau, Alaska, taken by the American National Red Cross from the order of the said Probate Court, dated February 9, 1938, denying admission to probate of a certain document alleged to be the last will and testament of Gustaf Lanart, deceased; and Frank H. Foster appearing for appellant, American National Red Cross, and Faulkner and Banfield and Grover C. Winn, appearing as attorneys for Erik Enar Krister Lovskog and Svanhild Sally Vilhelmina Abrahamsson nee Lovskog, brother and sister of deceased, Gustaf Lanart, and claimants to his estate; and evidence having been adduced before the court on behalf of both parties and arguments having been later made on behalf of all parties hereto, and the court being fully advised in the premises, does find the following facts:

FINDINGS OF FACT

I.

That Gustaf Lanart died at Gambier Bay, First Judicial Division, Territory of Alaska, on or about December 10, 1936, leaving per-

sonal property within the Juneau Precinct and within the jurisdiction of this court.

## II.

That in October 1936 the said Gustaf Lanart brought from Gambier Bay, where he lived, to Juneau, Alaska, to the B. M. Behrends Bank and left with the bank for safekeeping, without any directions as to its ultimate disposal in case of his death, a package containing some stocks and bonds, seaman's discharge papers, two bank books, naturalization certificate and certain receipts.

## III.

That some time in December 1936, after the death of Gustaf Lanart at Gambier Bay, Alaska, certain papers were found at Gambier Bay which had formerly belonged to him and which consisted of bills, folders, radio advertisements and other unimportant and [52] valueless papers, and, among them, some pages of a small notebook, all of which papers and said pages of the notebook had apparently been floating in the water and had been wet and dried out. That the pages of the notebook were not complete, and some of them were missing, and they were loose, and that on some of the pages of said notebook were found lists of personal property, and on one of the pages there was written, in the handwriting of deceased, the following:



'After Death

Please forward all to Red Cross, (as i don't think any relatives are alive,) the might be able to do some good with the..... i have

Gambier Bay

Oct 22 1932

GUS LANART

Eagles aerie No 1 Seattle  
will take care the burial

What is not mentioned in this will belong to PAF Bellingham the are the owners'

IV.

That deceased, before the date of his death and at the time the writing hereinabove last referred to was written, was a watchman at an old cannery at Gambier Bay belonging to the Pacific American Fisheries Company, and often referred to as the "P.A.F."

V.

That deceased was at the time of his death unmarried, and left surviving him as his sole heirs-at-law and distributees, his brother Erik Enar Krister Lovskog, and his sister Svanhild Sally Vilhelmina Abrahamsson nee Lovskog.

VI.

That said writing in the loose pages of the notebook aforesaid did not constitute a last will

and testament of deceased, and the same is not entitled to probate.

From the foregoing facts, the court makes the following

#### CONCLUSION OF LAW

That the writing in the notebook which has been offered as the last will and testament of deceased is not entitled to probate and the order of the Probate Court of the Juneau Precinct, Territory of Alaska, of February 9, 1938, is a valid order and should remain in full force and effect and appellant's appeal should be dismissed; and,

It is ordered that judgment be entered accordingly.

Dated at Juneau, Alaska, this.....day  
of....., 1939.

.....  
Judge" [53]

“[Title of District Court and Cause.]

#### DECREE AND ORDER PROPOSED BY CLAIMANTS

The above entitled cause having come on regularly to be heard on May 31st, 1938, upon the appeal of the American National Red Cross from an order of the Probate Court for the Juneau Precinct, First Judicial Division,

Territory of Alaska, dated February 9th, 1938, and entitled 'Order setting aside purported Will admitted to Probate and Decree Admitting the Claims of Erik Enar Krister Lovskog and Svanhild Sally Vilhelmina Abrahamsson as sole heirs', and the appellant American National Red Cross being represented by its attorney, Frank H. Foster, and appellees and claimants above named being represented by Faulkner & Banfield and Grover C. Winn; and testimony having been adduced in open court by all parties hereto, and counsel having later argued the questions of law involved herein; and the court being fully advised in the premises, and having made and filed herein its Findings of Fact and Conclusions of Law;

It is now ordered, adjudged and decreed that the order of the Probate Court, Juneau Precinct, Territory of Alaska, above referred to and which was made and entered on February 9th, 1938, is a valid order, and the purported will of the above named Gustaf Lanart is not entitled to be admitted to probate, and the appeal of the American National Red Cross is hereby dismissed and the cause is remanded to the Probate Court for the Territory of Alaska, Division Number One, for such further proceedings as are necessary to complete the administration of the estate of deceased and distribute the same according to law.

Done in open court this.....day  
of....., 1939.

.....  
Judge." [54]

[Title of District Court and Cause.]

ORDER SETTLING AND ALLOWING BILL  
OF EXCEPTIONS

The foregoing Bill of Exceptions was filed on August ....., 1939, within the time allowed for the filing thereof by the orders and rules of this court, and I, the undersigned, District Judge for the First Judicial Division of the Territory of Alaska, who presided at the trial and hearing of the above entitled cause do hereby certify that the foregoing Bill of Exceptions contains all the material facts, matters, things, proceedings, objections and rulings and exceptions thereto, occurring upon the trial of said cause and not heretofore a part of the record herein, including all evidence adduced at the trial, material to the issues presented by the Assignments of Error herein; and I further certify that the exhibit set forth, referred to and included therein, to-wit, Appellant's Exhibit No. 3, set out in full in the clerk's transcript of record, and Appellant's Exhibits Nos. 1 and 4 constitute all the exhibits offered in evidence at said trial except Exhibit No. 2, which is not pertinent to the issue made by the Assignments of Error; and I hereby make all of

said exhibits a part of the foregoing bill of exceptions and direct that the clerk forward to the Circuit Court of Appeals for the Ninth Circuit, for its examination and inspection, the originals of Appellant's Exhibits Nos. 1 and 4; and I hereby settle and [55] allow the foregoing Bill of Exceptions as a full, true and correct Bill of Exceptions in this cause and order the same filed as part of the records herein, and the clerk of this court is hereby directed to transmit such Bill of Exceptions with said original Exhibits Nos. 1 and 4 above specifically enumerated, to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that the foregoing Bill of Exceptions complies with all the rules of this court relating to the extension of the term for the purpose of presenting, settling and filing the Bill of Exceptions and all orders made by me extending the time for such presentation, settling and filing; and that the foregoing Bill of Exceptions was presented and is hereby settled and allowed within the time prescribed for that purpose and at the same term of court at which the judgment in said cause was rendered and entered.

Done in open court this 5th day of August, 1939.

GEO. F. ALEXANDER,

Judge.

O. K.

FRANK H. FOSTER,

Atty. for Red Cross.

[Endorsed]: Filed Aug. 5, 1939. [56]

[Title of District Court and Cause.]

### APPELLANT'S POINTS

In the above entitled cause on appeal the following is a statement of the points and parts of the record, for consideration thereof, upon which appellants intend to rely on their appeal:

#### Point I

The court erred in holding that the writing or memorandum containing in the memorandum notebook, Exhibit No. 1, is a valid holographic will, and that the same constitutes the last will and testament of Gustaf Lanart, as set forth in Findings of Fact Nos. I and IX.

#### Point II

The court erred in finding that by the term "Red Cross" as used in the memorandum or alleged purported will, the said Gustaf Lanart meant to designate the American National Red Cross, as set forth in Finding of Fact No. VII.

#### Point III

The court erred in making and entering Finding of Fact No. VIII, which is to the effect that the intent of deceased in making the instrument or memorandum was to bequeath all his property to the American National Red Cross. [57]

#### Point IV

The court erred in its Conclusions of Law No. I in which it was held that the Probate Court for the

Juneau Precinct was in error in setting aside the purported will and refusing it probate.

#### Point V

The court erred in its Conclusions of Law to the effect that the American National Red Cross is entitled to a decree to the effect that it is the sole devisee under the will of Gustaf Lanart and that the instrument offered in evidence and set forth in Findings is a valid holographic will, as found in Conclusions of Law Nos. II and III and in the Decree herein, and that the court should have signed the proposed Findings and Conclusions and Decree tendered by the heirs, appellants herein.

In other words, the points relied upon by appellants are, first, that the instrument or memorandum found in the notebook, introduced in evidence as Exhibit No. 1 is not a valid holographic will and, second, that even if the same were a will in other respects, no beneficiary is designated, and claimant American National Red Cross is not entitled to be found to be the beneficiary.

The testimony is brief, and we think it should all be printed in order to inform the court upon the points relied upon and which are all set forth in the Assignments of Error herein. The decision of the District Court is being forwarded with the appeal papers, but we do not think is necessary to incur the cost of printing this, and, therefore, suggest that it be not printed. [58]

Dated at Juneau, Alaska, this 5th day of August, 1939.

H. L. FAULKNER  
N. C. BANFIELD  
GROVER C. WINN

Attorneys for Appellants.

Service accepted this 5th day of August, 1939.

FRANK H. FOSTER

Attorney for Appellee.

[Endorsed]: Filed Aug. 5, 1939. [59]

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[Title of District Court and Cause.]

PRAECIPE

To the Clerk of the District Court for the Territory of Alaska, Division Number One:

You will please prepare and transmit to the Circuit Court of Appeals for the Ninth Circuit, in connection with the appeal herein, copies of the following named papers and documents:

1. Order of Probate Court, Territory of Alaska, Division Number One, Juneau Precinct, dated February 9, 1938, entitled "Order setting aside purported will admitted to probate, and decree admitting the claims of Erik Enar Krister Lovskog, and Svanhild Sally Vilhelmina Abrahamsson, as sole heirs."

- 1(a) Notice of appeal.

2. Decision of District Court herein.



3. Findings of Fact and Conclusions of Law.
4. Decree.
5. Exceptions to Findings, Conclusions and Decree and to refusal of court to enter claimant's proposed Findings, Conclusions and Decree.
6. Petition for order allowing appeal. [60]
7. Order allowing appeal.
8. Assignments of Error.
9. Citation.
10. Cost bond on appeal.
11. Stipulation re printing transcript of record.
12. Stipulation re exhibits.
13. Bill of Exceptions and order allowing same
14. Appellants' points.
15. Original Exhibits Nos. 1, 3 and 4.
16. This Praeceptum.

Dated at Juneau, Alaska, this 5th day of August, 1939.

H. L. FAULKNER

N. C. BANFIELD

GROVER C. WINN

Attorneys for Appellants.

Service of copy of above Praeceptum acknowledged this 5th day of August, 1939.

FRANK H. FOSTER

Attorney for American

National Red Cross, appellee.

[Endorsed]: Filed Aug. 5, 1939. [61]

United States of America,  
District of Alaska, Division No. 1—ss.

CERTIFICATE

I, Robert E. Coughlin, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached 62 pages of typewritten matter, numbered from 1 to 62, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the record prepared in accordance with the praecipe of the Appellant on file herein and made a part hereof, in cause No. 4182-A, wherein Erik Enar Krister Lovskog and Svanhild Sally Vilhelmina Abrahamson are the Appellants, and American National Red Cross is the Appellee, as the same appears of record and on file in my office, and that said record is by virtue of a petition for appeal and citation issued in this cause and the return thereof in accordance therewith.

I do further certify that this manuscript was prepared by me in my office, and that the cost of preparation, examination and certificate, amounting to Twenty-Nine Dollars (\$29.00) has been paid to me by counsel for Appellant.

In witness whereof I have hereunto set my hand and the seal of the above-entitled Court this 9th day of August, 1939.

[Seal]

ROBERT E. COUGHLIN,

Clerk.

[Endorsed]: No. 9269. United States Circuit Court of Appeals for the Ninth Circuit. Erik Enar Krister Lovskog and Svanhild Sally Wilhelmina Abrahamsson, Appellants, vs. American National Red Cross, Appellee. Transcript of Record. Upon Appeal from the District Court for the Territory of Alaska, Division Number One.

Filed August 21, 1939.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

